

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.51 OF 2009

Gunwant Madhavrao Ekuankar

Age about 53 years.

Occpation : Service

r/o Abhinav Colony, Rasa Road,

Kalamb, Tq. Kalamb, Dist. Yawatmal.

... Petitioner.

-vs-

1. The State of Maharashtra
Thr. its Secretary, Education Dept.
Mantralaya, Mumbai – 32.

2. The President,
Shri Mahavir Shikshan Prasarak Sanstha,
Kaathwada, Tq. Kalamb, Dist. Yawatmal.

3. The Education Officer (Secondary),
Zilla Parishad, Yawatmal.

4. Vijay Nemaji Dhobe,
Aged 52 years, Occ. Head Master,
Shri Mahavir High School, Kamathwada,
Tq. Kalamb, Dist. Yawatmal.

... Respondents.

WITH

WRIT PETITION NO.3492 OF 2008

Vijay Nemaji Dhobe,

Aged 52 years, Occ. Head Master,

Shri Mahavir High School, Kamathwada,

Tq. Kalamb, Dist. Yawatmal.

... Petitioner.

-vs-

1. The State of Maharashtra

Thr. its Secretary, Education Dept.
Mantralaya, Mumbai – 32.

2. The President,
Shri Mahavir Shikshan Prasarak Sanstha,
Kaathwada, Tq. Kalamb, Dist. Yawatmal.

3. The Education Officer (Secondary),
Zilla Parishad, Yawatmal.

4. Gunwant Madhavrao Ekuankar
Age about 53 years.
Occpation : Service
r/o Abhinav Colony, Rasa Road,
Kalamb, Tq. Kalamb, Dist. Yawatmal.

5. Dy. Director of Education
Amravati Circle, Amravati.

... Respondents.

Shri A. De, Advocate for petitioner in W.P. No.51/2009 and for respondent No.4 in W.P. No.3492/2008

Shri K. L. Dharmadhikari, Assistant Government Pleader for respondent Nos.1 and 3 in both the writ petitions.

Shri V. A. Kothale, Advocate for petitioner in W.P. No.3492/2008 and for respondent No.4 in W.P. No.51/2009.

CORAM : A.S.CHANDURKAR, J.

DATE : August 04, 2016

Common Judgment :

Since both these writ petitions have been tagged together as they arise from the same impugned order, they are being decided by this common judgment.

The petitioner in W.P. No.51/2009 was appointed on the post of Assistant Teacher on 14/06/1985. He had obtained the qualifications of B.Com and B.P.Ed. Subsequently he obtained the qualifications of B.Ed. The

petitioner in W.P. No.3492/2008 came to be appointed on 03/07/1984 having qualifications of B.A. B.P.Ed. The dispute relates to entitlement for the post of Head Master in the school run by the respondent No.2 Management. The petitioner in W.P. No.3492/2008 was promoted as Head Master by order dated 27/03/2006. The petitioner in W.P. No.51/2009 being aggrieved by the said order of promotion filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. By the impugned judgment dated 25/07/2008, the said appeal has been partly allowed declaring that the order of promotion dated 27/03/2006 issued in favour of the petitioner in W.P. No.3492/2008 was illegal. However, no relief was granted to the appellant before the School Tribunal. This judgment is under challenge in the aforesaid writ petitions.

2. Shri A. De, the learned counsel for the appellant before the School Tribunal submitted that the appellant was having the qualifications of B.Com. B.P.Ed along with degree in B.Ed. The respondent who had been promoted on the post of Head Master had the qualifications of B.A. B.P.Ed. According to the learned counsel, the said respondent did not have necessary teaching experience that was required for being promoted on the post of Head Master. He submitted that the qualification of B.P.Ed. could not be treated equivalent to the qualification of B.Ed for promotion as the

same could not be treated as a training qualification. As the appellant possessed the degree of B.Ed. he ought to have been promoted on the post of Head Master. According to him as per the Government Resolution dated 14/05/1987, the respondent in the said appeal was not entitled to be so promoted. He urged that the aforesaid issue stands concluded by the judgment of learned Single Judge in **2005(3) Mh.L.J. 696 Shivshakti Shikshan Sanstha and anr. vs. Nilkanth s/o Kawaduji Shivankar and anr.** It was then submitted that as both the appellant as well as the respondent before the School Tribunal had since retired, the only question was with regard to pensionary benefits by grant of a deemed date.

3. Shri V. A. Kothale, the learned counsel for the petitioner in W.P.No.3492/2008 supported the judgment of the School Tribunal. According to him the said respondent before the School Tribunal had been appointed prior to the appellant therein. By virtue of having qualifications of B.A. B.P.Ed. he had the necessary training qualifications and was therefore rightly promoted. He placed reliance upon the judgment of learned Single Judge in **2007(1)Mh.L.J. 860 Laxman Khanderao Ekhande v. State of Maharashtra and ors.** and submitted that the respondent before the School Tribunal ought to be treated as duly qualified. He then submitted that this Court while hearing the aforesaid writ petition had by way of interim relief stayed the effect and operation of the judgment of the School Tribunal due to

which he continued to discharge the duties as Head Master till his superannuation. He therefore submitted that there was no reason to interfere in writ jurisdiction.

Shri K. L. Dharmadhikari, the learned Assistant Government Pleader for the respondent-State submitted that the order passed by the School Tribunal was after considering the seniority of the incumbent who was promoted. As per the Government Resolution dated 14/05/1987 said order of promotion was justified.

4. I have given due consideration to the respective submissions. The qualifications of the appellant as well as the respondent before the School Tribunal are not in dispute. The question that arises is whether the respondent before the School Tribunal who had obtained qualifications of B.A.B.P.Ed. could be treated as having necessary training qualification as an Assistant Teacher for being considered for promotion. This issue has been considered by learned Single Judge in ***Shivshakti Shikshan Sanstha and anr.*** (supra) wherein it has been held that a candidate having the B.Com. B.P.Ed. qualification is not eligible to be appointed as Assistant Teacher in a substantive capacity and the requirement as per the Rules of 1981 is the qualification of B.Ed. as training qualification. In the light of aforesaid decision which stands subsequently confirmed by the Division Bench in Letters Patent Appeal, it is clear that teaching experience without having

B.Ed. degree would not entitle such candidate for being considered for promotion so as to meet the requirements of Rule 3 (1)(b) of the Rules of 1981.

5. In *Laxman K. Ekhande* (supra) that was relied upon by the learned counsel for the respondent before the School Tribunal, the dispute therein was with regard to appointments which were made prior to commencement of the Rules of 1981. In paragraph 14 of the aforesaid judgment reference has been made to the decision in *Shivshakti Shikshan Sanstha and anr.*(supra) and the same has been distinguished on the ground that the appointments therein were after 1981. In the present case also both the parties have been appointed after 1981. Therefore the case would be governed by the decision in *Shivshakti Shikshan Sanstha and anr.*(supra). On that count therefore, the finding that the respondent before the School Tribunal was not qualified to hold the post of Head Master appears to be just and proper and the same does not call for any interference. At the same time it will have to be held that the appellant was entitled to be so promoted on the post of Head Master in place of the respondent No.2 therein.

6. During pendency of the present proceedings, both the parties have retired. By virtue of the interim order granted on 27/04/2009, the

respondent before the School Tribunal worked as Head Master till his superannuation. In this backdrop, the following order would meet the ends of justice :

- (i) The judgment of the School Tribunal dated 25/07/2008 to the extent it disallows the claim of the petitioner in W.P. No.51/2009 is set aside. It is held that the petitioner was entitled to be promoted on the post of Head Master on 27/03/2006. The petitioner would therefore be entitled to said deemed date of promotion. Though he would not be entitled for any difference in salary, he would be entitled for pensionary benefits by considering him appointed as Head Master on 27/03/2006.
- (ii) In so far as the petitioner in W.P. No.3392/2008 is concerned, he having worked on the said post of Head Master, there would be no question of recovering the emoluments paid to him. He would however be entitled to future pensionary benefits as admissible for the post of Assistant Teacher from 27/03/2006.
- (iii) Necessary effect in aforesaid terms be given within period of three months from today.

Writ Petition No.51/2009 is partly allowed while W.P. No.3392/2008 stands dismissed. No order as to costs.

JUDGE

-: C E R T I F I C A T E :-

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